IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JOSEPH L. SIGNORELLI, Petitioner.	2 CA-CR 2006-0222-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause Nos. CR2003-162, CR2005-123, and CR2005-124

Honorable R. Douglas Holt, Judge

REVIEW GRANTED; RELIEF DENIED

Joseph Signorelli — Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Joseph L. Signorelli, a pleading defendant, challenges the trial court's denial of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., and its denial of his subsequent pro se motion for rehearing, raising three issues counsel did not present in the petition. We will not disturb a trial court's discretionary grant or denial of post-conviction relief absent a clear abuse of the court's discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 Signorelli was charged by information in 2003 with conspiracy to commit first-degree murder, solicitation of first-degree murder, and two counts of attempted first-degree murder. After a preliminary hearing held pursuant to Rule 5, Ariz. R. Crim. P., 16A A.R.S., the hearing officer found probable cause to bind Signorelli over for trial on the charges. He eventually pled guilty to solicitation of first-degree murder and admitted a prior felony conviction in return for dismissal of the three other charges.

¶3 As part of the same plea agreement, Signorelli also pled guilty in two later cases, Nos. CR2005-123 and CR2005-124, to promoting and attempting to promote prison contraband. In establishing the factual basis for those pleas, Signorelli admitted that he had, on two separate occasions while he was in jail awaiting trial, transferred prescribed narcotic drugs to other inmates. Although the cases do not appear to have been formally consolidated, Signorelli pled guilty and was sentenced simultaneously in all three. Consonant with the plea agreement, the trial court imposed an aggravated, twelve-year prison term for solicitation of murder and allowed Signorelli to serve that term concurrently with the sentence he had already served on his prior conviction in CR2003-161 for facilitating fraudulent schemes and artifices. For the prison-contraband convictions, the trial court placed Signorelli on five- and seven-year terms of intensive probation, consecutive to his prison sentence for solicitation.

¶4 Signorelli filed a timely notice of post-conviction relief, and the trial court appointed counsel. The petition that followed asserted one principal claim—that Signorelli's plea agreement and guilty pleas had not been knowing or voluntary because he

had been under the influence of "heavy doses of Morphine and other narcotic drugs prescribed for pain." Signorelli sought to withdraw his guilty pleas, to have his convictions and sentence vacated, and to face trial on the original charges. As a second issue, he complained the state had not honored the provision of the plea agreement that called for his 1992 GMC pickup truck to be returned to him or his designee.

¶5 The trial court declined to order the return of Signorelli's pickup truck, presumably finding the issue not cognizable under Rule 32. For reasons it explained in a written minute entry, the court found Signorelli's guilty pleas had "clearly" been knowing and voluntary. The minute entry states:

> [The state's response to Signorelli's petition] reviews the various efforts the Court made to determine the level of Mr. Signorelli's competence. The Court sent Mr. Signorelli to Dr. Barry Morenz to conduct a mental evaluation regarding Mr. Signorelli's competency. On January 31, 2005 Dr. Morenz found Signorelli to be competent and that he showed no evidence of delusions or hallucinations. Dr. Morenz also stated that Defendant Signorelli was rational and able to assist in his own defense.
>
> The Court also hired Dr. Randall S. Prust, M.D. to evaluate the level of drugs Mr. Signorelli was using while in jail and whether Mr. Signorelli needed the medication he had been using. Dr. Prust's opinion was that Mr. Signorelli was alert, awake, oriented and that the Defendant was exaggerating his need for pain medication. Hence, the Court ordered a reduction of narcotics.
>
> At the change of plea hearing on April 15, 2005, the Court carefully reviewed Mr. Signorelli's medication usage. The Defendant told the Court he was not under the influence of medication that prevented him from understanding his plea or the proceedings. Defendant Signorelli said he understood the plea. He acknowledged the Court's efforts to be careful and to

> make certain Defendant understood what he was doing. Defendant Signorelli clearly, knowingly and voluntarily changed his plea.

¶6 The issue of the amounts of prescription narcotics Signorelli was taking and their effect on his competency had been brought to the trial court's attention on multiple occasions during the months preceding Signorelli's change-of-plea hearing and had, in fact, been the subject of a motion, evaluation, and hearing pursuant to Rule 11, Ariz. R. Crim. P., 16A A.R.S. Keenly aware of the issue, the trial court took extra pains at the change-of-plea hearing to be certain that Signorelli was competent, fully understood the proceeding, and had knowingly and voluntarily chosen to plead guilty.

¶7 At one point in the hearing, the court told Signorelli: "I appreciate your attention. You appear very courteous and responsive and you appear to be understanding what I'm doing here. I'm trying to be very careful and go through this so I'm confident you understand the proceedings." Signorelli thanked the court and later confirmed that he "fully underst[oo]d the terms and conditions of the plea agreement" and was pleading guilty voluntarily. Having carefully ascertained both Signorelli's competency to plead guilty and the voluntariness of his pleas at the change-of-plea hearing, the trial court did not abuse its discretion in denying relief on Signorelli's post-conviction claim to the contrary.

¶8 In his pro se motion for rehearing, Signorelli did not actually ask the court to reconsider its ruling on the voluntariness of his guilty pleas. Instead, he first reframed the issue concerning the return of his pickup truck, alleging that the state's refusal to return the truck and the court's refusal to order its return amounted to a breach of the plea agreement.

Then Signorelli presented several new claims he had not previously raised. Although he was not entitled to raise new or additional claims in a motion for rehearing, *see* Rules 32.5, 32.6, 32.6(d), 32.9(a), Ariz. R. Crim. P., we address the substance of those claims only because the trial court chose to do so, over the state's repeated objections.

¶9 The court rejected Signorelli's claim that the state had breached the plea agreement by failing to return his truck as agreed. Based on the state's avowals in its multiple responses to the motion for rehearing, the court noted the problem appeared to lie not with the state but with Signorelli's having failed to send a designated representative willing to take possession of the truck. Nothing in the available record suggests either that the state breached the plea agreement or that the trial court abused its discretion in rejecting the claim.

¶10 The first of Signorelli's new claims in the motion for rehearing was that the trial court had failed to comply with the formal requirements of Rules 26.2(b) and 26.10(a), Ariz. R. Crim. P., 17 A.R.S., in pronouncing sentence. The transcript of the sentencing hearing reflects that the court accurately recited the three offenses to which Signorelli had pled guilty, his admission that he had a prior conviction, and the aggravating factors supporting the aggravated sentence for solicitation specified in the plea agreement. Although the court failed to state specifically that the solicitation offense was nondangerous but repetitive and that the second and third offenses were nondangerous and nonrepetitive, both the written plea agreement and the sentencing minute entry accurately state those details. The trial court sentenced Signorelli in conformity with his plea agreement, and the minor

omissions from its oral recitation were inconsequential. *See State v. Maddasion*, 24 Ariz. App. 492, 496, 539 P.2d 966, 970 (1975) (resentencing unnecessary if technical failure to adhere to Rule 26.10 causes no prejudice to substantial rights). We find no abuse of the trial court's discretion in denying relief on this ground.

¶11 Next, Signorelli claimed the trial court violated the requirements of A.R.S. § 13-603(K) by neither imposing, nor expressly waiving, the term of community supervision required by § 13-603(I). Section 13-603(I) requires a court sentencing a felon to a term of imprisonment to "impose on the convicted person a term of community supervision . . . [that] shall be served consecutively to the actual period of imprisonment." "[C]ommunity supervision is part of the sentence imposed." *State v. Jenkins*, 193 Ariz. 115, ¶ 18, 970 P.2d 947, 952 (App. 1998). It is "simply a part of the sentence that has to be served in the community after completion of a period of imprisonment or served in prison if there is a refusal to sign and abide by the release conditions." *State v. Cowles*, 207 Ariz. 8, ¶ 14, 82 P.3d 369, 372 (App. 2004); *see also* A.R.S. § 13-105(4).

¶12 Section 13-603(K) permits, but does not require, a court sentencing a person to prison and to a consecutive term of probation to "waive community supervision and order that the person begin serving the term of probation upon the person's release from confinement." Otherwise, "[i]f the court does not waive community supervision, the person shall begin serving the term of probation after the person serves the term of community supervision." *Id*. Because the trial court here did not expressly waive community supervision, Signorelli's terms of intensive probation in CR2005-123 and CR2005-124 will

begin after he has completed his prison sentence and the attendant period of community supervision in CR2003-162, whether or not he achieves an early release from confinement and serves a portion of his twelve-year prison term in the community by "sign[ing] and agree[ing] to abide by conditions of supervision established by the state department of corrections." § 13-603(I).[1]

¶13 At the change-of-plea hearing, the trial court omitted to mention the required term of community supervision in conjunction with the solicitation charge in CR2003-162, although it did articulate the requirement in connection with one of the two promoting-contraband charges. However, the requirement was clearly set out, in a paragraph Signorelli specifically initialed, in the written plea agreement that Signorelli personally acknowledged having read and understood. Signorelli does not contend that he was unaware of the requirement and would not have pled guilty had he known about it. Rather, his complaint is that the court omitted a formal, technically required step in pronouncing sentence.

---

[1]Section 41-1604.07(F), A.R.S., provides in part:

> If a prisoner who reaches the prisoner's earned release credit date refuses to sign and agree to abide by the conditions of supervision before release on community supervision, the prisoner shall not be released. When the prisoner reaches the sentence expiration date, the prisoner shall be released to begin the term of community supervision. If the prisoner refuses to sign and agree to abide by the conditions of release, the prisoner shall not be released on the sentence expiration date and shall serve the term of community supervision in prison. The department is required to supervise any offender on community supervision until the period of community supervision expires.

¶14 It is true that the trial court, at both the change-of-plea and sentencing hearings, could have been considerably more clear and thus foreclosed all ambiguity.[2] But the important points are that Signorelli was, in fact, aware of the requirement that a period of community supervision accompany his prison sentence and that the court was required by law to impose the term. *See Jenkins*, 193 Ariz. 115, ¶ 19, 970 P.2d at 952-53 ("[t]he failure to formally inform defendant of community supervision does not necessarily mean his plea was involuntary," unless record demonstrates defendant was not otherwise informed of requirement). Because the period of community supervision is statutorily required unless expressly waived under § 13-603(K) and because the trial court's ruling on Signorelli's motion for rehearing makes plain the court did not waive or intend to waive it here, we cannot say the trial court abused its discretion in denying relief on this claim.

---

[2]For example, during the sentencing hearing, the court stated, "[Defense counsel] is right, you'll probably be out [of prison] in about eight years[,] give or take. Now, when you get out you'll be on probation in 2005-123 . . . and 2005-124." Elsewhere, the court said:

> So you've got to come back here when you get out of prison no matter what. . . . So when you get out of prison, you'll have 24 hours to report. There's probably—you're [sic] going to be a period of time where you may or may not be on early release and you'll have to go somewhere anyway. You may—I would get over here, if I were you, and talk to probation and make sure they know where you are, where you're living, what you're doing. At that time you'll be implemented—well, you'll be implemented before you leave for prison on probation, but then you'll be reimplemented and review the terms of probation that will kick in consecutive to the time you'll be serving in the Department of Corrections.

¶15 Finally, Signorelli asserted the trial court lacked jurisdiction to accept his guilty pleas and to convict and sentence him on the contraband charges. He appears to believe, mistakenly, that no formal charging documents were ever filed for either offense (although he has attached to his petition for review copies of the felony informations by which he was charged in CR2005-123 and CR2005-124). He contends he pled guilty to the charges without having had, or having waived, an initial appearance and a preliminary hearing. But the transcript of the change-of-plea hearing reflects that, through counsel, Signorelli waived a preliminary hearing and probable-cause finding, had a cursory initial appearance and arraignment, and entered a not-guilty plea in both cases, supplying the necessary predicate for the change-of-plea hearing that followed immediately.

¶16 Not only is Signorelli mistaken about what had transpired procedurally but, as the trial court correctly ruled, he also waived any defects in the preliminary proceedings by pleading guilty. The trial court cited *State v. White*, 102 Ariz. 18, 19, 423 P.2d 716, 717 (1967), in which our supreme court observed:

> The right to have a preliminary hearing is a personal privilege for the benefit of the accused and he may waive it expressly or by implication. . . . [B]y "bargaining for pleas" and by pleading guilty to the amended information the defendant waived his right to have a preliminary examination on the charge of receiving stolen property, even though that crime is not a lesser included offense within the originally charged crimes of burglary and grand theft.

The *White* court held the defendant under those circumstances had also waived the filing of a formal complaint with a magistrate. *Id.* at 20, 423 P.2d at 718.

¶17 Numerous other cases similarly illustrate the "well established [rule] in Arizona that [a defendant] waives any challenges to nonjurisdictional defects in the trial court proceedings when he enters a valid guilty plea." *State v. Reed*, 121 Ariz. 547, 548, 592 P.2d 381, 382 (App. 1979) (listing cases); *see also State v. Carter*, 151 Ariz. 532, 533, 729 P.2d 336, 337 (App. 1986) (pre-guilty plea constitutional violations, including speedy trial issue, waived by guilty plea); *State v. Webb*, 140 Ariz. 321, 323, 681 P.2d 473, 475 (App. 1984) (guilty plea waived claim of vindictive prosecution); *Dominguez v. Meehan*, 140 Ariz. 329, 332, 681 P.2d 912, 915 (App. 1983), *aff'd*, 140 Ariz. 328, 681 P.2d 911 (1984) (guilty plea waived double jeopardy claim). Signorelli did not present a colorable claim of a jurisdictional defect in either of the 2005 promoting-contraband cases, and he waived all other claims by pleading guilty to the charges.

¶18 We find no abuse of the trial court's discretion in denying the petition for post-conviction relief and the motion for rehearing. *See Watton*. Therefore, although we grant Signorelli's petition for review, we deny relief.

_____
GARYE L. VÁSQUEZ, Judge

CONCURRING:

_____
JOHN PELANDER, Chief Judge

_____
JOSEPH W. HOWARD, Presiding Judge